

**BAIL SLP**

The Appellants/Accused namely 1.Madhavan Nair, aged about 90 years, S/o.Kumara Pillai, 2.Sivadhasan Nair, aged about 88 years, S/o. Kumara Pillai, 3.Karnakumar, aged about 56 years, S/o. Madhavan Nair, 4.Vivekananthan aged about 50 years, S/o. Kesavan Nair are directed to be released on bail as per order of this Court dated 02.12.2014 and made in MP(M)No.1 of 2014 in CrI.R.C(MD)No.476 of 2014 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Date of Reservation</i>	<i>17.07.2019</i>
<i>Date of Judgment</i>	<i>25.10.2019</i>

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

CrI.R.C(MD)No.476 of 2014

1.Madhavan Nair
2.Sivadhasan Nair
3.Karnakumar
4.Vivekananthan

: Revision Petitioners/
Appellants/A1 to A4

Vs.

The State of TamilNadu
through the Sub Inspector of Police,
Puthukkadai.
(Crime No.316 of 1995)

: Respondent/Respondent

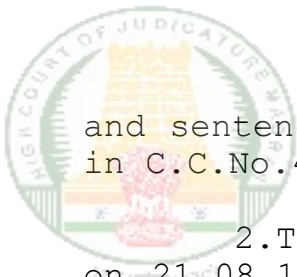
Prayer: Criminal Revision has been filed under Sections 397 and 401 of Criminal Procedure Code, against the judgment passed in C.A.No.130 of 2005, dated 15.10.2014 by the Sessions Judge (Mahila Fast Track Court), Nagercoil, partly altered the conviction and sentenced passed by the Judicial Magistrate No.II, Kuzhithurai, in C.C.No.44 of 1996, dated 12.04.2005.

For Revision Petitioners : Mr.K.Samidurai

For Respondent : Mr.APG Ohm Chaira Prabhu
Government Advocate
(Criminal side)

J U D G M E N T

<https://hcservices.ecourts.gov.in/hcservices/>
This Criminal Revision is directed against the judgment passed in C.A.No.130 of 2005, dated 15.10.2014 by the Sessions Judge (Mahila Fast Track Court), Nagercoil, partly altered the conviction



and sentenced passed by the Judicial Magistrate No.II, Kuzhithurai, in C.C.No.44 of 1996, dated 12.04.2005.

2.The case of the prosecution is that due to previous enmity on 21.08.1995 in front of the house of the witness Manikandan, A1 armed with Vettukathi, A2 with Kurunthadi, A3 and A4 with Savukku Thadi and A5 and A6 without arms formed themselves into an unlawful assembly with a common object of causing injuries to the witnesses and attacked them and thereby caused injuries. The Sub Inspector of Police attached to Puthukkadai Police Station, Nagercoil has filed a final report against the accused examining the witnesses.

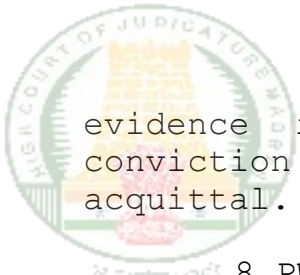
3.The trial court, on proper appreciation of the evidence, both oral and documentary, came to the conclusion that the petitioners/A1 to A4 found guilty and they were convicted for the offence punishable under section 147 IPC and imposed with a fine of Rs.100/-, in default to undergo one week simple imprisonment; the petitioners 1, 3 and 4 were convicted for the offence under section 325 IPC and each of them sentenced to undergo one year RI and to pay a fine of Rs.5,000/- each, in default to undergo 3 months simple imprisonment; that the second petitioner/A2 was convicted under section 323 IPC and imposed a fine of Rs.1,000/-, in default to undergo one month simple imprisonment and the third petitioner/A3 was convicted for the offence under section 323 IPC (2 counts) and imposed with a fine of Rs.1,000/- for each count, in default to undergo 3 months simple imprisonment each.

4.Aggrieved by the judgment of the trial court, the petitioners/A1 to A4 preferred appeal in C.A.No.130 of 2005 before the Mahila Court, Nagercoil. The first appellate court partly allowed the appeal by reducing the sentence in respect of the offence under section 325 IPC alone and sentenced the petitioners 1, 3 and 4/A1, A3 and A4 to undergo 6 months rigorous imprisonment and the remains stand unaltered. Aggrieved by the judgment of the first appellate court, the petitioners are before this court.

5.Heard both sides and perused the materials available on records.

6.It is seen from the records that the petitioners 1 and 2/A1 and A2 already died and the same was recorded by this court on 25.07.2019 and hence, the charges against the petitioners 1 and 2/A1 and A2 abated.

7.The contention raised on the side of the petitioners/A3 and A4 is that there are contradictions in the evidence of PW1, PW2, PW4 and PW5 and the oral evidence of PW1, PW2, PW4 and PW5 is not corroborated with the medical evidence and the prosecution has failed to fix the correct place of occurrence and the manner of occurrence put forward by the prosecution is highly artificial and improbable and there are innumerable circumstances which will demolish the fabric of the prosecution case and the prosecution



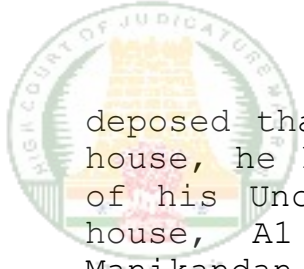
evidence is mere insufficient and unacceptable to warrant a conviction and prays that the petitioners/A3 and A4 are entitled to acquittal.

8. PW1, PW2, PW4 and PW5 are the injured. PW1 is the father of PW2 and he gave Ex.P1 complaint. PW4 is the son of PW1. PW2 is the brother of PW1. It is admitted that all the accused and PW1 to PW5 are relatives. PW4 in his complaint and PW1 to PW3 and PW5 during their evidence deposed that due to previous enmity, on 21.08.1995 at 1.00 am, all the accused joined together and came and they damaged the house door of PW1 and PW4 and when PW1 to PW5 came out and questioned it, all the accused assaulted them.

9. PW1 deposed that on 21.08.1996 at 1.00 am, he heard the sound from his brother Manikandan Nair's house and then, he, his son Sathish Kumar came out, at that time, they saw that all the accused scolded and he questioned the accused and at that time, A3 and A4 with stick repeatedly beat his brother Manikandan and A3 and A4 with stick caused injury on his scalp, right eye, right nose, right shoulder, left shoulder, left side hip, thigh and A4/Vivekananthan kicked with stick on his teeth and all the accused assaulted him, his son, his brother and brother's son and thereafter they went to the Government Hospital, Kuzhithurai and took treatment and his son gave the complaint to the police.

10. PW2 is the son of the brother of PW1 and he deposed that on 26.08.1995 at mid-night, he heard the sound that somebody damaged the door of their house with stick and logs and when he opened the door, he saw that A1 with Vettukathi, A2 with stick, A3 and A4 with Savukku Kattai and A5 said that "வீடு கட்டுவதில் ஏன் தடை செய்கிறார்கள்" and scolded him and after hearing the sound of the accused, PW1 to PW4 came and questioned the accused and then A1 with Vettukathi caused injury on the ear of PW4 and the accused Karnakumar kicked with his leg on the stomach of PW4 and A5 punched on the chest of PW4 and when PW1 attempted to resist it, the accused Vivekananthan and Karnakumar with Savukku Kattai repeatedly beat PW1 and due to it, PW1 sustained injuries on his scalp, left side hip, right side chest, upper jaw and due to it, there was loss of teeth for PW1 and further, PW1 sustained injury on his right cheek, right eye and when he attempted to resist the accused, they attempted to assault PW2 and A2/Sivadhasan Nair caused injury on his two hands, chest, right leg and left leg and both thighs and the accused Sivadhasan Nair also assaulted him and the accused Karnakumar Nair tried to resist the assault, the accused Karnakumar caused injury on his father's left eye and left thigh, chest, right side of his back with Savukku Kattai and due to it, there was fracture on the left thigh bone of his father and Ponnu Pillai, Nesamani Nadar and Swamy Dhass and some others came, the accused fled away.

11. PW3 is cited as eye witness. But he turned hostile and did not support the case of the prosecution. PW4 is the son of PW1. PW4



deposed that on 20.08.1995 at 1.00 am, when he was sleeping in his house, he heard the sound that some persons damaged the house door of his Uncle Manikandan Nair, he and his father came out of the house, A1 to A4 with weapons assembled before the house of Manikandan Nair and picked up quarrel with Manikandan Nair and his son and when he and PW1 questioned it, the accused Madhavan Nair with Vettukathi caused injury on his left forearm, left side of his scalp and left ear, and the accused Karnakumar beat him and kicked on his stomach and further, the accused Karnakumar with Savukku Kattai caused injury on his father's left thigh, right thigh, left eye, left cheek, chest, back and the accused Vivekananthan with Savukku Kattai caused injury on his mouth and due to it, there was loss of teeth for his father and when Ennai Chandran attempted to resist it, the accused Sivadhan Nair caused injury on his right hand, right wrist and the accused Karnakumar assaulted on the right side of his rib and when Manikandan Nair attempted to resist it, the accused Karnakumar with Savukku Kattai caused injury on the left thigh, chest, right thigh, right shoulder and when Ponnu Pillai, Nesamani and Swamy Dhass came, all the accused run away and he gave Ex.P1 complaint to the police station.

12.PW5 is the brother of PW1. PW5 deposed that on 20.08.1995 at 1.00 am, when he was sleeping, he heard the sound of some one damaging the door of his house and when he opened the door, he saw that all the accused stood in front of his house and the accused said that குமாரி ஜெயா என்பவளுக்கு வீடு வைப்பதற்கு ஏன் தடங்கல் செய்கிறார்கள் and due to it, quarrel arose and after hearing the sound, PW1 and PW4 came and due to the assault by the accused, he sustained injury in his left thigh, back and chest and in that occurrence, PW1, PW2 and PW4 sustained injuries and then, they went to the Government Hospital, Kuzhithurai and took treatment.

13.On careful perusal of the evidence of PW1, PW2, PW4 and PW5, it reveals that all the accused with a common intention to commit the offence unlawfully assembled and came to the house of Manikandan Nair and when it was questioned by PW1, PW2, PW4 and PW5, they assaulted PW1 to PW5. Hence, the evidence of PW4 is corroborated with the contents found in Ex.P1 complaint and there was corroboration in the evidence of PW1, PW2, PW4 and PW5. Hence, the argument put forth on the side of the petitioners /A3 and A4 stating that there were contradictions in the evidence of PW1, PW2, PW4 and PW5 is not at all acceptable.

14.The Doctor, who gave treatment to PW1, PW2, PW4 and PW5 was examined as PW8. PW8 deposed that when he was on duty, PW1, PW2, PW4 and PW5 came for taking treatment and PW1, PW2, PW4 and PW5 told him that they assaulted by known persons with Vettukathi, Stick, Savukku Kattai. PW8 found the following injuries on them:-

(1) PW1 (Ramachandran) :-

<https://hcservices.ecourts.gov.in/hcservices/>

- (1) Contusion 5 x 3 cm on the the right side of the face;
- (2) Right side eye found redness;



- (3) Contusion found on the nose with bleeding on the right side nose;
- (4) Contusion 6 x 3 cm on the left side hip;
- (5) Contusion 8 x 4 cm on the left side shoulder;
- (6) Contusion 8 x 4 cm on the left thigh;
- (7) Bleeding from the gums with missing of teeth;
- (8) Pain on the chest;
- (9) Contusion 5 x 4 cm on the right side chest;
- (10) Pain on the head; and
- (11) Contusion 8 x 3 cm on the right side thigh.

(2) PW2 (Vilaya Chandran)

- (1) Contusion 8 x 4 cm on the right side chest;
- (2) Contusion 10 x 6 cm on the left hand upper arm;
- (3) Contusion 10 x 6 cm on the left side thigh;
- (4) Contusion 6 x 4 cm on the right hand upper side;
- (5) Abrasion 1 x 1 cm on the left side leg of 3rd finger and
- (6) Pain on the left side hip.

3. PW4 (Sathish Kumar):-

- (1) Contusion 10 x 8 cm on the left upper forearm;
- (2) Contusion on the head 6 x 2 cm;
- (3) Contusion found 2 x 1 cm on the left side ear; and
- (4) Contusion on the left hand 10 x 8 cm.

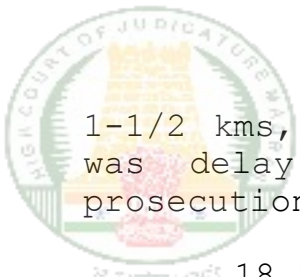
4. PW5 (Manikandan Nair):-

- (1) A diffusional swelling contusion on the left thigh;
- (2) A contusion 8 x 6 cm on the right shoulder with abrasion 2 x 1 cm on it.
- (3) Pain on the chest; and
- (4) Pain in the abdomen.

15. The Doctor who gave treatment for Ramachandran's throat was examined as PW9. PW9 deposed that the injured Ramachandran Nair told him that he had pain in his throat and he took X-ray on his throat and he did not find any injuries on his ear, nose and throat.

16. In this case, PW1 and PW2, PW4 and PW5 deposed that the accused assaulted them and caused injury. PW8, the Doctor also found injuries on PW1, PW2, PW4 and PW5. Hence, the evidence of PW1, PW2, PW4 and PW5 is corroborated with the evidence of PW8. Hence, the argument put forth on the side of the petitioners/A3 and A4 stating that there was no corroboration between the oral evidence and medical evidence is not at all acceptable.

17. The learned counsel appearing for the petitioners/A3 and A4 argued that the occurrence took place on 20.08.1995 at 1.00 pm, but the complaint was given on 21.08.1995 at 8.30 hours and the distance between the place of occurrence and the police station is



1-1/2 kms, but no complaint was given immediately and hence, there was delay in giving the complaint and it is fatal to the prosecution.

18. In this case, PW1, PW2, PW4 and PW5 categorically stated the occurrence took place at the mid night and further, they had in the house due to the threat by the accused and hence, in the morning at 8.30 pm, PW1, PW2, PW4 and PW5 went to the police station and PW4 gave the complaint. Hence, there was proper explanation given on the side of the prosecution side for the delay in giving the complaint to the police. Therefore, it is held that it is not fatal to the prosecution.

19. The learned counsel appearing for the petitioners/A3 and A4 argued that PW1 is a blind person and it is not possible for him to see the occurrence and hence, his evidence cannot be relied upon.

20. On careful perusal of the evidence of PW1, it reveals that PW1 categorically stated that even though, he is a blind, the accused are his relatives and he knew the place of occurrence and only on hearing the noise of the accused, he identified the accused. Further, it is not denied that the accused are relatives of PW2 to PW5 and hence, it is possible for PW1, even though he is a blind person, he can identify the accused on hearing their voice.

21. It is to be noted that the motive for the occurrence is that due to property dispute, quarrel arose between PW1 to PW5 and the accused. It is admitted on the side of the petitioners/A1 to A4 that there was property dispute between them and PW1 to PW5. Further, in this case, even though there are minor contradictions in the evidence of eye witnesses, motive does not play vital role and PW1 to PW5 have categorically stated the motive for the occurrence.

22. For all the reasons stated above, this court is of the considered view that the first appellate court, after considering the entire materials available on record, both oral and documentary had given a correct findings, which does not require any interference by this court. However, considering the facts and circumstances of the case and also considering the age of the petitioners 3 and 4/A3 and 4, the punishment imposed on them requires modification.

23. In the result, this criminal revision is **partly allowed in respect of the petitioners 3 and 4/A3 and 4. In respect of the petitioners 1 and 2/A1 and A2, this criminal revision is dismissed as abated.** The punishment imposed on the petitioners 3 and 4/A3 and A4 for the offence under section 325 IPC is reduced to 3 months RI. In other aspects, the findings of the first appellate court is confirmed. The period of sentence, if any already undergone by the petitioners 3 and 4/A3 and A4 shall be given set off under Section 428 of Cr.P.C. The petitioners 3 and 4/A3 and A4 after adjusting the



period of imprisonment already undergone, shall undergo imprisonment for the remaining period.

Sd/-

Assistant Registrar (crl side)

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/ /2020

Sub Assistant Registrar(CS)

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To,

- 1.The Sessions Judge,
Mahila Fast Track Court, Nagercoil
Kanyakumari District.
- 2.The Judicial Magistrate No.II,
Kuzhithurai.
3. The Chief Judicial Magistrate,
Kanyakumari at Nagercoil.
4. The Principal Sessions Judge,
Kanyakumari District at Nagercoil.
5. The Sub Inspector of Police,
Puthukkadai.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai (2 copies)

+1 CC to Mr.K.SAMIDURAI, Advocate (SR-95296[F] dated 31/10/2019)

Crl.RC(MD)No.476 of 2014
25.10.2019

VB(09.01.2020) 7P 10C